



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2013-0616; FRL-9931-35-Region-6]

Approval and Promulgation of Implementation Plans; New Mexico; Revisions to the New Source Review (NSR) State Implementation Plan (SIP) for Albuquerque-Bernalillo County; Prevention of Significant Deterioration (PSD) Permitting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving two revisions to the New Mexico State Implementation Plan (SIP) to update the Albuquerque-Bernalillo County Prevention of Significant Deterioration (PSD) SIP permitting program consistent with federal requirements. New Mexico submitted the Albuquerque-Bernalillo County PSD SIP permitting revisions on July 26, 2013, and June 11, 2015, which includes a request for parallel processing of the submitted 2015 revisions. These submittals contain revisions to address the requirements of the EPA's May 2008, July 2010, and October 2012 PM_{2.5} PSD Implementation Rules and to incorporate revisions consistent with the EPA's March 2011 Fugitives Interim Rule, July 2011 Greenhouse Gas (GHG) Biomass Deferral Rule, and July 2012 GHG Tailoring Rule Step 3 and

GHG PALs Rule. The EPA finds that these revisions to the New Mexico SIP meet the Federal Clean Air Act (the Act or CAA) and EPA regulations, and are consistent with EPA policies. We are taking this action under section 110 and part C of title I of the Act. The EPA is not approving these rules within the exterior boundaries of a reservation or other areas within any Tribal Nation's jurisdiction.

DATES: This final rule is effective on **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2013-0616. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733.

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SUPPLEMENTARY INFORMATION: Throughout this document wherever “we,” “us,” or “our” is used, we mean the EPA.

I. Background

The background for today's action is discussed in detail in our May 20, 2015 proposal (80 FR 28901). In that notice, we proposed to approve portions of SIP submittals for the State of New Mexico submitted on July 26, 2013, and March 4, 2015, that contained revisions to the Albuquerque-Bernalillo County PSD program. The March 4, 2015 submittal included a request for parallel processing of the submitted 2015 revisions, meaning that the EPA proposed approval of a rule that was not yet finalized at the local level. Our May 20, 2015 proposed approval and accompanying Technical Support Document (TSD) provided the EPA's evaluation of the March 4, 2015 revisions to the New Mexico SIP. We preliminarily determined that the revisions were consistent with the CAA and the EPA's regulations and guidance. As such, we proposed approval of the SIP revisions contained in the March 4, 2015 submittal.

Under the EPA's "parallel processing" procedure, the EPA proposes a rulemaking action on proposed SIP revisions concurrently with the State or Local Agency's public review process. If the proposed SIP revision is not significantly or substantively changed, the EPA will finalize the rulemaking on the SIP revision as proposed after responding to any submitted comments. Final rulemaking action by the EPA will occur only after the final SIP revision has been fully adopted by the State or Local Agency and submitted formally to the EPA for approval as a SIP revision. See 40 CFR part 51, Appendix V.

The City of Albuquerque-Bernalillo County completed their rulemaking process, and the Albuquerque-Bernalillo County Air Quality Control Board adopted revisions to the PSD program on April 30, 2015. These adopted changes were submitted as a revision to the New

Mexico SIP on June 11, 2015. The EPA has evaluated the final SIP revision submittal for any changes made from the time of proposal. See “Addendum to the TSD” for EPA–R06–OAR–2013–0616, available in the rulemaking docket. Our evaluation indicates that adopted changes to the Albuquerque-Bernalillo County PSD program are the same as the revisions that we proposed to approve; and therefore, do not alter our rationale presented in the May 20, 2015 proposed approval. As such, the EPA is proceeding with our final approval of the revisions to the New Mexico SIP, consistent with the parallel processing provisions in 40 CFR Part 51, Appendix V.

This action to approve the aforementioned revisions to the New Mexico SIP is being taken under section 110 of the Act. We did not receive any comments regarding our proposal.

II. Final Action

The EPA is approving revisions to the Albuquerque-Bernalillo County PSD program that were submitted by New Mexico as a SIP revision on July 26, 2013, and June 11, 2015. We are approving the portions of the July 26, 2013, and June 11, 2015 submittals that revised the following sections under 20.11.61:

- 20.11.61.2 NMAC – Scope,
- 20.11.61.5 NMAC – Effective Date,
- 20.11.61.6 NMAC – Objective,
- 20.11.61.7 NMAC – Definitions,
- 20.11.61.10 NMAC – Documents,
- 20.11.61.11 NMAC – Applicability,
- 20.11.61.12 NMAC – Obligations of Owners or Operators of Sources,
- 20.11.61.14 NMAC – Control Technology Review and Innovative Control Technology,
- 20.11.61.15 NMAC – Ambient Impact Requirements,

- 20.11.61.18 NMAC – Air Quality Analysis and Monitoring Requirements,
- 20.11.61.20 NMAC – Actuals Plantwide Applicability Limits (PALs),
- 20.11.61.23 NMAC – Exclusions from Increment Consumption,
- 20.11.61.24 NMAC – Sources Impacting Federal Class I Areas-Additional

Requirements,

- 20.11.61.27 NMAC – Table 2-Significant Emission Rates,
- 20.11.61.29 NMAC – Table 4-Allowable PSD Increments, and
- 20.11.61.30 NMAC – Table 5-Maximum Allowable Increases for Class I Variances.

The EPA has determined that these revisions to the New Mexico SIP's Albuquerque-Bernalillo County PSD program are approvable because the submitted rules are adopted and submitted in accordance with the CAA and are consistent with the EPA regulations regarding PSD permitting. The EPA is taking this action under section 110 and part C of the Act.

The EPA is severing from our final approval action the revisions to 20.11.60 NMAC submitted on July 26, 2013, which are revisions to the Albuquerque-Bernalillo County NNSR Program and will be addressed in a separate action.

III. Incorporation by Reference

In this rule, we are finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are finalizing the incorporation by reference of the revisions to the New Mexico regulations as described in the Final Action section above. We have made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the EPA Region 6 office.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION OF THIS DOCUMENT IN THE**

FEDERAL REGISTER]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposed of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: August 17, 2015.

Ron Curry,
Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart GG – New Mexico

2. In §52.1620(c) the second table titled “EPA Approved Albuquerque/Bernalillo County, NM Regulations” is amended by revising the entry for “Part 61 (20.11.61)” to read as follows:

§ 52.1620 Identification of plan

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EPA APPROVED ALBUQUERQUE/BERNALILLO COUNTY, NM REGULATIONS

State citation	Title/subject	State approval/ effective date	EPA approval date	Explanation
New Mexico Administrative Code (NMAC) Title 20—Environment Protection, Chapter 11—Albuquerque/Bernalillo County Air Quality Control Board				
* * * * *				
Part 61 (20.11.61 NMAC)	Prevention of Significant Deterioration	5/29/2015	[Insert Date of Publication in the Federal Register] [Insert Federal Register citation]	
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